

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs.

CR-06-2083 JEC

6 LEROY LUCERO,

7 Defendant.

8  
9 TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARING

10 BEFORE THE HONORABLE JOHN EDWARDS CONWAY

SENIOR UNITED STATES DISTRICT JUDGE

11 OCTOBER 10, 2007, 10:40 A.M.

12 ALBUQUERQUE, NEW MEXICO

13 FOR THE PLAINTIFF:

14 UNITED STATES ATTORNEY'S OFFICE

District of New Mexico

15 201 Third Street, Northwest, Suite 900

Albuquerque, New Mexico 87102

16 BY: MR. LOUIS E. VALENCIA

17  
18 FOR THE DEFENDANT:

19 FEDERAL PUBLIC DEFENDER'S OFFICE

District of New Mexico

20 111 Lomas Boulevard, Northwest, Suite 501

Albuquerque, New Mexico 87102

21 BY: MR. RICHARD A. WINTERBOTTOM

22  
23 Proceedings recorded by mechanical stenography,  
24 transcript produced by computer.

25  
JULIE GOEHL, RDR, CRR, RPR, RMR, NM CCR #95  
FEDERAL OFFICIAL COURT REPORTER  
333 Lomas Boulevard, Northwest  
Albuquerque, New Mexico 87102

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1 SENTENCING HEARING

2 (Court in session at 10:40 a.m.)

3 THE COURT: United States of America v. LeRoy  
4 Lucero, Criminal Cause 06-2083.

5 MR. VALENCIA: Good morning, Your Honor.  
6 Louis Valencia on behalf of the United States.

7 MR. WINTERBOTTOM: Richard Winterbottom, Your  
8 Honor, on behalf of Mr. Lucero, and he is present.

9 THE COURT: All right. Please come forward.  
10 Have you had an opportunity to review the  
11 presentence report with your client?

12 MR. WINTERBOTTOM: I have, Judge.

13 THE COURT: Anything in the presentence report  
14 you specifically wish to call to my attention?

15 MR. WINTERBOTTOM: Not necessarily, Judge.

16 THE COURT: That doesn't tell me anything,  
17 "not necessarily." Either you do or you don't.

18 MR. WINTERBOTTOM: I don't, Judge.

19 THE COURT: All right. Anything you wish to  
20 say on behalf of your client before I impose sentence?

21 MR. WINTERBOTTOM: Judge, the presentence  
22 report finds Mr. Lucero to be an armed career criminal.  
23 His guidelines are 180 months to 210 months. The  
24 government, pursuant to the plea agreement, has agreed  
25 to recommend 180 months.

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1                   We would ask the Court to sentence Mr. Lucero  
2                   to 180 months.

3                   I would ask the Court to recommend the  
4                   500-hour drug program, and also that he be designated to  
5                   the Victorville USP.

6                   Judge, sometimes I feel like I am not really  
7                   capable of doing much for my client, and I'm afraid  
8                   that's the case here. Mr. Lucero has a fairly  
9                   significant criminal history. His mother was a drug  
10                  addict. He grew up basically institutionalized.

11                  My sense is -- and I've known LeRoy now for  
12                  almost nine months -- that after being in the New Mexico  
13                  penitentiary system for years and years and years, he  
14                  has learned something.

15                  He has an eight-month-old son who was here in  
16                  court a few minutes ago, who he absolutely dotes upon.  
17                  He has a wife who is a hard-working woman and is loyal  
18                  to him.

19                  He came out of prison. He was on parole. He  
20                  found a job at a window installation company. He was  
21                  doing pretty well. He wasn't using drugs, as far as  
22                  anyone knows.

23                  And he really had some goals. He hopes he  
24                  maintains those during the course of his incarceration.  
25                  He's going to be younger than I am when he gets out, and

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1 I'm encouraging him to realize that he still has a  
2 future with his family and his kids, and hopefully he  
3 can still salvage some parenthood and bring them up  
4 better than perhaps he was.

5 THE COURT: All right. Do you have anything  
6 you wish to say?

7 THE DEFENDANT: Yes, sir, I do.

8 First of all, I would like to apologize to my  
9 wife for leaving her alone to raise my son; and my  
10 father, for putting him into this. I think this is a  
11 harsh punishment. I was trying to protect my family,  
12 trying to do it the legal way.

13 Yes, I did possess a firearm. I shouldn't  
14 have had it, but somebody was trying to break into my  
15 house and hurt my family. I didn't know what to do.

16 That's it.

17 THE COURT: All right. The Court has reviewed  
18 the presentence report factual findings and has  
19 considered the sentencing guideline applications and the  
20 factors set forth in 18 United States Code Section  
21 3553(a)(1) through (7), including the finding that the  
22 defendant is an armed career criminal.

23 The offense level is 30, the criminal history  
24 category is VI. Pursuant to Section 5G1.1, the  
25 guideline imprisonment range is 180 to 210 months. The

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1 Court notes the felony is possession of a firearm.

2 As to the indictment, Criminal Cause 06-2083,  
3 the defendant, LeRoy Lucero, is committed to the custody  
4 of the Bureau of Prisons for a term of 180 months.

5 The Court recommends the defendant participate  
6 in the Bureau of Prisons 500-hour drug and alcohol  
7 treatment program.

8 The defendant is placed on supervised release  
9 for a term of three years.

10 The defendant must comply with the standard  
11 conditions of supervised release and the following  
12 mandatory conditions:

13 The defendant will submit to DNA collection in  
14 compliance with the statutory requirements while  
15 incarcerated in the Bureau of Prisons or at the  
16 direction of the United States Probation Office.

17 The defendant shall not possess, have under  
18 his control, or have access to any firearm, ammunition,  
19 explosive device, or other dangerous weapons, as defined  
20 by federal, state, or local law.

21 The following special condition will also be  
22 imposed:

23 The defendant must participate in and  
24 successfully complete a substance abuse treatment  
25 program, which may include drug testing, outpatient

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1 counseling, or residential placement.

2 The defendant may be required to pay a portion  
3 of the cost of treatment and/or drug testing, as  
4 determined by the Probation Office. The defendant must  
5 refrain from the use and possession of alcohol and other  
6 forms of intoxicants. He must not frequent places where  
7 alcohol is the primary item for sale.

8 The defendant must submit to a search of his  
9 person, property, or automobile under his control, to be  
10 conducted in a reasonable manner and at a reasonable  
11 time, for the purpose of detecting firearms, ammunition,  
12 and drugs, at the direction of the probation officer.  
13 He must inform any residents that the premises may be  
14 subject to a search.

15 The defendant must participate in and  
16 successfully complete a mental health treatment program,  
17 which may include outpatient counseling, residential  
18 placement, or prescribed medication, as approved by the  
19 probation officer.

20 The defendant may be required to pay a portion  
21 of the costs of this treatment, as determined by the  
22 Probation Office.

23 I will not impose a fine. I will impose a  
24 special assessment.

25 Consistent with the stipulation in the plea

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1 agreement, the defendant forfeits his rights, title, and  
2 interest to a Mossberg Model 500A 12-gauge shotgun,  
3 Serial Number K117708, and two Winchester brand 12-gauge  
4 cartridges of ammunition.

5 The defendant will pay a special assessment of  
6 \$100, which is due and payable immediately.

7 Pursuant to 18 United States Code Section  
8 3742(a), within ten days of the entry of the judgment  
9 you have the right to appeal the final sentence of this  
10 Court.

11 You have the right to apply for leave to  
12 appeal in forma pauperis if you are unable to pay the  
13 cost of an appeal.

14 I'll recommend that you be incarcerated in  
15 Victorville, California.

16 Now, let me give you a little friendly advice.  
17 When you get out of prison, don't go back to Las Vegas.  
18 I mean, it's done nothing but get you in trouble. So  
19 you figure out someplace else you want to live, out of  
20 state here. I mean, out of state or in state, but not  
21 in Las Vegas. Because if you go back to Vegas, you're  
22 going to fall into the same friends, same thing.

23 Well, I won't see you in 15 years, I won't be  
24 around, but the next judge will. So stay out of  
25 trouble.

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1                   You can earn 56 days a year good time, is it?

2                   MR. WINTERBOTTOM: Fifty-four.

3                   THE COURT: Fifty-four. So your 180 months

4 can be cut down a fair amount if you stay out of

5 trouble. So stay out of trouble, and don't go back to

6 Vegas. All right?

7                   Good luck to you.

8                   MR. WINTERBOTTOM: Thank you, Your Honor.

9                   (Proceedings concluded at 10:47 p.m.)

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1 UNITED STATES OF AMERICA  
2 DISTRICT OF NEW MEXICO  
3

4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Julie Goehl, RDR, CRR, RPR, RMR,  
6 New Mexico CCR #95, Federal Official Realtime Court  
7 Reporter, in and for the United States District Court  
8 for the District of New Mexico, do hereby certify that  
9 pursuant to Section 753, Title 28, United States Code,  
10 that the foregoing is a true and correct transcript of  
11 the stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page  
13 format is in conformance with the regulations of the  
14 Judicial Conference of the United States.

15 Dated this 8th day of February, 2016.  
16

17 \_\_\_\_\_  
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